

TAB 30

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July 24, 2007

New York, NY

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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THE COMMONWEALTH OF MASSACHUSETTS,)	CIVIL ACTION NO.
Plaintiff,)	03-CV-11865-PBS
)	
vs.)	CONTINUED
)	VIDEOTAPED
MYLAN LABORATORIES, INC.; BARR)	DEPOSITION OF
LABORATORIES, INC.; DURAMED)	JUDITH WATERER
PHARMACEUTICALS, INC.; IVAX)	30(b)(6)
CORPORATION; WARRICK)	
PHARMACEUTICALS CORPORATION;)	New York,
WATSON PHARMACEUTICALS, INC.;)	New York
SCHEIN PHARMACEUTICAL, INC.; TEVA)	July 24, 2007
PHARMACEUTICALS USA, INC.; PAR)	
PHARMACEUTICAL, INC.; DEY, INC.;)	
ETHEX CORPORATION; PUREPAC)	
PHARMACEUTICAL CO.; and ROXANE)	Reported By:
LABORATORIES, INC.,)	CATHI IRISH,
Defendants.)	RPR, CLVS

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<p style="text-align: right;">Page 868</p> <p>1 I'll ask you if you can identify those 2 for the record. 3 A. The three documents as you described 4 them. 5 Q. Do you know what the A level, B level 6 and C levels refer to in the source program? 7 A. Yes. 8 Q. And what are they? 9 A. A level was if there was a sole source 10 auto sub level of participation. B level was 11 sole source and the C was multi-vendor. 12 Q. When you say sole source auto sub, can 13 you explain to the jury what that refers to? 14 A. Sole source would mean that within the 15 source program that they would award the product 16 only to one vendor. So if you won the award, you 17 were the only one represented in that buying 18 group source program. 19 Auto substitution referred to the fact 20 that some of the wholesalers had a higher degree 21 of compliance with a portion of their membership 22 because they set something up that said, in</p>	<p style="text-align: right;">Page 870</p> <p>1 A. I think sales and marketing in 2 conjunction figured out where it needed to be. 3 Q. So the sales function and the marketing 4 function, so that would be your function and the 5 sales unit? 6 A. Yeah, we would set it based upon the 7 competitive environment and what was required in 8 order to win position. 9 Q. So were you involved, you personally 10 involved in the process of setting the levels of 11 pricing for the A, B and C levels? 12 A. I may have been. I don't specifically 13 recall. 14 Q. Would Ms. Paoletti have been involved 15 in setting those price levels as well? 16 A. I think these programs were back in '97 17 and '98 when she was just coming on board. In 18 terms of acting in any kind of product management 19 or marketing function prior to that, she'd been 20 more administrative, so I don't think that she 21 would have been involved in that. 22 Q. At -- did Roxane have any different</p>
<p style="text-align: right;">Page 869</p> <p>1 essence, even if you accidentally try and order 2 another vendor's product, you'll automatically 3 get the one that's on the source program. 4 And multiple vendors would be 5 essentially where anybody who wanted to offer a 6 bid price to the program would be included, and 7 the retail stores could pick and -- excuse me -- 8 pick and choose whose product they wanted to get. 9 Q. Were there different pricing levels 10 that were set by Roxane with regard to these 11 three programs? 12 A. I believe that to be the case. The 13 concept was that the higher the compliance level 14 of the buying group, the better the pricing would 15 occur. So I think in general that's probably -- 16 in general that's probably true. I don't know if 17 there may be some overlap on individual products 18 where an A price and the B price might have been 19 the same, but the general concept was yes. 20 Q. Was there a group or some particular 21 function at Roxane that would set the prices with 22 regard to each of these programs?</p>	<p style="text-align: right;">Page 871</p> <p>1 levels of pricing for its contract customers? 2 A. At various times, we had broad general 3 categories of pricing that changed constantly, 4 depending on the competitive environment for 5 different types of customers. There was a 6 general guideline. 7 Q. Did they have names? 8 A. Yeah. They changed over time. It 9 might be A, B, C, it might be tier 1, 2, 3. I 10 don't really recall. 11 Q. At any particular time in the history - 12 - in Roxane's history, was there a particular 13 place that these various levels of contract 14 pricing were recorded? 15 A. The general guidelines, yes, but 16 exceptions were made to them constantly. 17 Q. Of course. And those general 18 guidelines, where would they have been 19 documented? 20 A. They were in pricing grids. 21 Q. So is a pricing grid a particular 22 document or is it a database of some kind?</p>

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<p style="text-align: right;">Page 872</p> <p>1 A. Kind of both.</p> <p>2 Q. Can you explain that to those of us who</p> <p>3 are uninitiated?</p> <p>4 A. There -- there's a -- a master document</p> <p>5 that holds a lot of product information in it.</p> <p>6 One of the columns within that or several of the</p> <p>7 columns within that are bid price related. And</p> <p>8 another document that refers to that document is</p> <p>9 known amongst us as the price grid, and that is</p> <p>10 shared with -- in contracts so they know where to</p> <p>11 set pricing.</p> <p>12 Q. Who maintains the pricing grid?</p> <p>13 A. I believe that's maintained</p> <p>14 predominantly by Lesli Paoletti. The contracts</p> <p>15 group may also have some input into that. I'm</p> <p>16 not sure.</p> <p>17 Q. Okay. Do you know whether Roxane</p> <p>18 maintained historic records of the pricing grid</p> <p>19 over time?</p> <p>20 A. I think that some of them have been</p> <p>21 saved. I'm not sure what the process is.</p> <p>22 Q. But is it not -- is it fair to say that</p>	<p style="text-align: right;">Page 874</p> <p>1 that was done like on a daily, weekly, monthly.</p> <p>2 It was very much according to market dictates.</p> <p>3 Q. I think you testified that the pricing</p> <p>4 grid was -- and I've lost it now, but we can go</p> <p>5 back in a second. You were bidding on a daily</p> <p>6 basis or routine basis; is that accurate?</p> <p>7 A. Correct, yes.</p> <p>8 Q. So normally what you would bid on a</p> <p>9 product for various levels of customer would be</p> <p>10 reflected in the pricing grid, correct?</p> <p>11 A. Again, if the product was stable</p> <p>12 without a lot of price changes, it may be</p> <p>13 reflective for a majority of the customers, but</p> <p>14 on products that were under competitive</p> <p>15 pressures, the grid would not likely reflect the</p> <p>16 pricing.</p> <p>17 MR. HEIDLAGE: Can you mark that as the</p> <p>18 next exhibit, please?</p> <p>19 (Exhibit Waterer 114, document</p> <p>20 Bates stamped D0536703 through 752, marked for</p> <p>21 identification, as of this date.)</p> <p>22 THE VIDEOGRAPHER: The time is 3:11</p>
<p style="text-align: right;">Page 873</p> <p>1 at any particular time in Roxane's history, one</p> <p>2 could have gone to the pricing grid and</p> <p>3 determined the set prevailing price that Roxane</p> <p>4 was charging its various levels of customers?</p> <p>5 A. In a broad general sense, yes. For an</p> <p>6 individual product that was under competitive</p> <p>7 pressures, the grid would never be likely to</p> <p>8 reflect the prevailing price.</p> <p>9 Q. Would the grid be changed to reflect</p> <p>10 the prevailing competitive situation with regard</p> <p>11 to that product or would it be left and then just</p> <p>12 have exceptions made to the grid?</p> <p>13 A. Both.</p> <p>14 Q. What would cause Roxane to change the</p> <p>15 grid to reflect competitive pressure on a</p> <p>16 product?</p> <p>17 A. If it got -- if an individual product</p> <p>18 came under intense pricing pressure, such that</p> <p>19 the pricing on the grid was not in any way</p> <p>20 related to what we were normally bidding every</p> <p>21 day, when that became cumbersome, the pricing</p> <p>22 grid would be adjusted, but it wasn't something</p>	<p style="text-align: right;">Page 875</p> <p>1 p.m. We're going off the record.</p> <p>2 (Discussion off the record.)</p> <p>3 THE VIDEOGRAPHER: The time is 3:14</p> <p>4 p.m. We're back on the record.</p> <p>5 BY MR. HEIDLAGE:</p> <p>6 Q. Ms. Waterer, just going back to Exhibit</p> <p>7 Waterer 111, Exhibit Waterer 112 and Exhibit</p> <p>8 Waterer 113, which are the A, B and C levels for</p> <p>9 the wholesaler source program, are the prices</p> <p>10 that are shown on these various levels for the</p> <p>11 source program, for example, would they have been</p> <p>12 on the pricing grid during that time period that</p> <p>13 is applicable to these programs?</p> <p>14 A. I -- to the best of my recollection, we</p> <p>15 did not have a pricing grid like this at the time</p> <p>16 when these were in place.</p> <p>17 Q. So let me just step back for a second</p> <p>18 and let's identify what I've placed before you as</p> <p>19 Exhibit Waterer 114 is a document which has a</p> <p>20 title, Roxane Laboratories Multi-Source Product</p> <p>21 Information Master, and it has Bates numbers</p> <p>22 D0536703 through D0536752. And I just asked you</p>

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